

(b) If any items are withheld from disclosure on grounds of privilege, the disclosing party shall provide a log describing each item and stating the reason(s) why it was not produced. The privilege log shall provide an index, identifying the allegedly privileged documents and shall provide sufficient detail to permit an informed decision as to whether the document is at least potentially privileged. Specifically, the index must include: A description of the document, including its subject matter and the purpose for which it was created; the date the document was created; the name and job title of the author of the document; and if applicable, the name and job title of the recipient(s) of the document. The judge may order an *in camera* inspection of the privileged documents, if necessary, to determine the proper application of the privilege.

§ 2700.106 Pre-Hearing Conference.

(a) *When held.* As early as practicable after the parties have received the materials set forth in § 2700.105, the presiding Judge will order and conduct a pre-hearing conference. At the discretion of the Judge, the pre-hearing conference may be held in person, by telephone, or electronic means. After receipt of the materials set forth in § 2700.105 and prior to the pre-hearing conference, parties are required to engage in a discussion to explore the possibility of settlement.

(b) *Content.* At the pre-hearing conference, the parties will discuss the following: Settlement efforts in the case; the narrowing of issues; an agreed statement of issues and facts; defenses; witnesses and exhibits; motions; and any other pertinent matter. Within a time determined by the Judge during the pre-hearing conference, the parties must provide each other with documents or materials intended for submission as exhibits at the hearing that have not already been provided in accordance with the provisions of § 2700.105. At the conclusion of the conference, the Judge will issue an order setting forth any agreements reached by the parties, and will specify in the order the issues to be addressed by the parties at hearing.

§ 2700.107 Discovery.

Discovery is not permitted except as ordered by the Administrative Law Judge.

§ 2700.108 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart G of this part, except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which will not apply.

(b) *Agreements.* At the beginning of the hearing, the Judge will enter into the record all agreements reached by the parties as well as defenses raised during the pre-hearing conference. The parties and the Judge then will attempt to resolve or narrow the remaining issues. The Judge will enter into the record any further agreements reached by the parties.

(c) *Evidence.* The Judge will receive oral, physical, or documentary evidence that is relevant, and not unduly repetitious or cumulative. Testimony will be given under oath or affirmation. The parties are reminded that the Federal Rules of Evidence do not apply in Commission proceedings. Any evidence not disclosed as required by §§ 2700.105 and 2700.106(b), including the testimony of witnesses not identified pursuant to § 2700.106(b), shall be inadmissible at the hearing, except where extraordinary circumstances are established by the party seeking to offer such evidence.

(d) *Court reporter.* A court reporter will be present at the hearing. An official verbatim transcript of the hearing will be prepared and filed with the Judge.

(e) *Oral and written argument.* Each party may present oral argument at the close of the hearing. Post-hearing briefs will not be allowed except by order of the Judge.

(f) *Judge's decision.* The Judge shall make a decision that constitutes the final disposition of the proceedings within 60 calendar days after the hearing. The decision shall be in writing and shall include all findings of fact and conclusions of law; the reasons or bases for them on all the material

§ 2700.109

issues of fact, law, or discretion presented by the record; and an order. If a decision is announced orally from the bench, it shall be reduced to writing within 60 calendar days after the hearing. An order by a Judge approving a settlement proposal is a decision of the Judge.

§ 2700.109 Review of Judge's Decision.

After the issuance of the Judge's written decision, any party may petition the Commission for review of the Judge's written decision as provided for in subpart H of this part.

§ 2700.110 Application.

The rules in this subpart will govern proceedings before a Judge in a case designated for Simplified Proceedings under §§ 2700.102 and 2700.103. The provisions of subparts A and I apply to Simplified Proceedings when consistent with these rules in subpart J. The provisions of subpart C of this part apply to Simplified Proceedings except for § 2700.29, which does not apply. The provisions of subpart G of this part apply to Simplified Proceedings except for §§ 2700.56, 2700.57, 2700.58, 2700.59, 2700.65, and 2700.67, which do not apply. The provisions of subpart H of this part apply to Simplified Proceedings except for § 2700.76, which does not apply. The provisions of subparts B, D, E and F of this part do not apply to Simplified Proceedings.

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Sec.

2701.1 Purpose and scope.

2701.2 Open meetings policy; closure of meetings.

2701.3 Announcement of meetings.

2701.4 Request to open or close meeting.

2701.5 Petition for review.

2701.6 Discussion during open meetings.

2701.7 Expedited closing procedure.

AUTHORITY: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823).

SOURCE: 44 FR 2575, Jan. 12, 1979, unless otherwise noted.

§ 2701.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the Government in the

29 CFR Ch. XXVII (7-1-12 Edition)

Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open, to the extent practicable, the meetings of the Commission to public observation while preserving the Commission's ability to fulfill its responsibilities and respect the interests of persons in confidential consideration of sensitive matters.

(b) *Scope.* This part applies to all meetings of the Commission. A "meeting of the Commission" means a joint deliberation in person or by conference telephone call of at least a majority of either the members of the Commission or of a panel of three or more Commissioners that determines or results in the joint conduct or disposition of official Commission business, but does not include (1) deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, and the circumstances of meetings, such as their time, place, and subject matter, and (2) the individual deliberations of Commission members of matters considered upon circulated documents or other notation procedure.

§ 2701.2 Open meetings policy; closure of meetings.

(a) *Policy.* Commission meetings will generally be open to public observation, including meetings concerning the disposition by the Commission of a formal adjudication. See 5 U.S.C. 522b(c)(10).

(b) *Closure.* Meetings may be closed, or certain information about a meeting may not be disclosed under the circumstances contemplated by 5 U.S.C. 522b(c)(1)–(10), and under the procedures specified by 5 U.S.C. 552b (d) and (f). Commission employees may attend closed meetings of the commission unless the notice of a closed meeting states otherwise.

§ 2701.3 Announcement of meetings.

(a) *Generally.* The Commission shall publicly announce and submit to the FEDERAL REGISTER at least 7 days before a meeting, the time, place, subject matter of a meeting, whether it is to be open or closed, and the name and phone number of the Commission employee who will respond to requests for information about the meeting. The description of the subject matter of a meeting